

BEFORE THE MEDICAL LICENSING
BOARD OF INDIANA
CAUSE NUMBER: 2004 MLB 0003

STATE OF INDIANA,

Petitioner,

v.

WARRICK LEE BARRETT, M.D.
License Number: 01031033A,

Respondent.

FILED

OCT 05 2004

HEALTH PROFESSIONS
BUREAU

FINDINGS OF FACT AND ORDER

The Medical Licensing Board of Indiana ("Board") held an administrative hearing on July 22, 2004, in Room C of the Conference Center, Indiana Government Center South 302 West Washington Street, Indianapolis, Indiana, concerning a disciplinary complaint filed against Warrick Lee Barrett, M.D., ("Respondent").

The State of Indiana was represented by Deputy Attorney General James R. Holden. Respondent appeared in person and by counsel, Peter Pogue.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 3-2-0, issues the following Findings of Fact and Order:

FINDINGS OF FACT

1. Respondent's address on file with the Board is 9313 Castle Knoll Blvd., Indianapolis, IN 46250 and he is a duly licensed medical doctor holding Indiana license number 01031033A. The Respondent also held a medical license in the State of Ohio.

2. Respondent's Ohio Medical license was permanently revoked by order of the Ohio Medical Board ("Ohio Board") on August 8, 2001. The Ohio Board made the following findings of fact:

"Dr. Barrett prescribed dangerous drugs to Patients 1 through 168 without physically examining any of the patients. Moreover, he prescribed these drugs without first ordering any lab work or other medical tests.

Dr. Barrett prescribed Viagra, which is to be used with caution in patients suffering from hypertension, to patients who suffered from hypertension without first ascertaining the patients' current blood pressure or whether the patients' hypertension was controlled.

Dr. Barrett acknowledged that diabetes and organic conditions can cause a patient to have erectile dysfunction. Nevertheless, Dr. Barrett prescribed Viagra to patients without examining them for these conditions.

Dr. Barrett testified that, if a patient had come to his office requesting Viagra, he would have assessed for the presence of cardiovascular disease. Nevertheless, Dr. Barrett prescribed Viagra to patients over the Internet without performing such an assessment.

Dr. Barrett prescribed Viagra to Patient 31, despite the facts that Patient 31 had reported a history of kidney disease. Viagra should be used with caution in patients with kidney disease, and Dr. Barrett had asked no questions regarding the type or extent of Patient 31's kidney disease.

Dr. Barrett prescribed Viagra to Patient 117 without requesting any additional information, despite the fact that Patient 117 reported that he was then being treated for supraventricular tachycardia with Toprol XL.

Dr. Barrett prescribed Propecia to Patient 4 despite the fact that hypothyroidism is one cause of hair loss, and Dr. Barrett had no information regarding the state of Patient 4's thyroid. Dr. Barrett acknowledged that, if he had seen Patient 4 in his office, he would have evaluated Patient 4 more thoroughly.

Dr. Barrett prescribed Xenical to Patient 6 who was also being prescribed a thyroid hormone substitute by another physician. Dr. Barrett acknowledged that Xenical is contraindicated for an overweight person who has hypothyroidism that is not being adequately treated. Dr. Barrett further acknowledged that he did not know whether the other physician had adequately treated Patient 6's thyroid disease.

Dr. Barrett prescribed Valtrex to Patient 40 for treatment of herpes, a sexually transmitted disease. Dr. Barrett did not advise Patient 40 to avoid sexual contact during an outbreak. Dr. Barrett admitted, however, that if he had seen Patient 40 in an office based setting, he would have advised Patient 40 as to the restrictions on sexual contact during an outbreak of the disease.

Dr. Barrett testified that, when he advised Patient 5 to seek medical attention if Patient 5 experienced side effects from the medication Dr. Barrett prescribed, Dr. Barrett had not intended Patient 5 contact him. Dr. Barrett stated that he would not have been in a position as an on-line consultant to provide the necessary care.

A Virtual Medical Group pharmacist refilled a prescription written by Dr. Barrett for patient 40, despite the fact that the pharmacist advised Patient 40 to see a physician to determine if Patient 40 truly had the condition for which the medication was being prescribed.

Dr. Barrett admitted that he had not warned these patients of the potential side effects of the medications he prescribed, and stated that it's the patient's responsibility "to identify if they're not feeling well in the course of taking the medication."

Dr. Barrett testified that he did not select the dosage and administration of the medications he prescribed, but allowed those decisions to be made by the Virtual Medical Group computer."

3. The Ohio Board made the following conclusions of law:

"1) The conduct of Dr. Barrett...constitutes 'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that clause is used in § 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(B), Ohio Administrative Code.

Rule 4731-11-09(B), Ohio Administrative Code, provides:

(B) Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, and situations involving nurses practicing in accordance with standard care arrangements, as described in Paragraph (D) and (E) of this rule, a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any dangerous drug which is not a controlled substance to a person who the physician has never personally physically examined and diagnosed, except in accordance with the following requirements:

- (1) The physician is providing care in consultation with another physician who has an ongoing professional relationship with the patient, and who has agreed to supervise the patient's use of the drug or drugs to be provided; and
 - (2) The physician's care of the patient meets all applicable standards of care and all applicable statutory and regulatory requirements.
- 2) Dr. Barrett's conduct constitutes 'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that

clause is used in § 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(C), Ohio Administrative Code.

Rule 4731-11-09(C), Ohio Administrative Code, provides:

A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule.

- 3) Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, the violations of 4731-11-09(B) and 4731-11-09(C), Ohio Administrative Code, also constitute:

'[F]ailure to maintain minimal standards applicable to the selection or administration of drugs,' as the clause is used in division (B)(2) of § 4731.22 of the Revised Code; 'selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes,' as that clause is used in division (B)(3) of § 4731.22 of the Revised Code; and 'a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in division (B)(6) of § 4731.22 of the Revised code.

- 4) Dr. Barrett's conduct constitutes a '[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,' as that clause is used in § 4731.22(B)(10), Ohio Revised Code, to wit: § 4729.51(C), Ohio Revised Code, Sale of dangerous drugs.

Section 4729.51(C), Ohio Revised Code provides, in pertinent part:

- (1) Except as provided in division (C)(4) of this section, no person shall sell, at retail, dangerous drugs."

4. Respondent filed an appeal in the Court of Common Pleas Franklin County, Ohio, on or about August 28, 2001. On May 29, 2002, the Court affirmed the Board's findings in all respects with one exception: The Court found that there was not "reliable, probative and substantial evidence showing that Dr. Barrett had criminal intent in prescribing the drugs at issue." Hence, the Court found that the Board's finding that Dr. Barrett engaged in the sale of dangerous drugs in violation of R.C. 4729.51(C) is not supported by the evidence. The remaining three conclusions of law and the Board's sanction of permanent revocation were affirmed.

ULTIMATE FINDINGS OF FACT

The conduct described above constitutes a violation of the following:

1. Indiana Code § 25-1-9-4(a)(7), in that, Respondent has had disciplinary action taken against his license to practice in any other state or jurisdiction on grounds similar to IC 25-1-9-4; and
2. Indiana Code § 25-9-4(a)(4)(B), in that, Respondent has continued to practice although unfit due to failure to keep abreast of current theory and practice.

ORDER

Based upon the above Findings of Fact, the Board issues the following Order:

1. Respondent's Indiana medical license is hereby placed on **INDEFINITE SUSPENSION**. Respondent shall not be permitted to seek reinstatement of his license for a period of one (1) year from the date of the execution of this Order. By Order of the Board, the suspension of the Respondent's license is **HEREBY STAYED**.
2. Respondent's Indiana medical license is placed upon **INDEFINITE PROBATION**. During the period that Respondent's license remains on probation, his practice of medicine shall be governed by the following **TERMS AND CONDITIONS**:
 - a. Respondent shall keep the Board informed of his residential address and telephone number as well as his office address and telephone number.
 - b. Respondent's practice of medicine shall be limited to occupational medicine, in his current position.

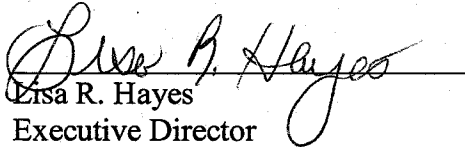
- c. Respondent must immediately submit a written plan of supervision to the Board, including the name of a supervising physician acceptable to the President of the Board.
 - d. Respondent shall be responsible for causing his supervisor to submit reports to the Board on a monthly basis.
 - e. Respondent must obtain an evaluation from the Center for Personalized Education for Physicians (CPEP) within six (6) months of the date of the final order. At this time, the Board may modify the terms and conditions of probation based on the results of the evaluation.
 - f. Respondent must report any medical malpractice claims or actions and any disciplinary actions taken regarding his medical staff privileges.
 - g. Respondent must obtain fifty (50) hours of Category 1 CME within the first 12 months of his probation. These CME hours must be within his area of specialty. Respondent shall complete 25 CME hours each year thereafter while the status of his license is probationary. Respondent shall be responsible for submitting proof of the completion of these hours to the Board.
 - h. Violation of this order or the terms and conditions of his probation shall subject Respondent to an Order to Show Cause and the possible imposition of further sanctions.
3. Respondent shall pay a civil fine of \$2,000.00 to the Health Professions Bureau within one (1) year of the date of the final order.

4. Respondent shall pay costs associated with the investigation and prosecution of this cause in the amount of \$13.81 to the Office of the Attorney General and \$75.00 to the Health Professions Bureau. These amounts shall be paid within one (1) year of the date of the final order.

SO ORDERED, this 5th day of October, 2004.

MEDICAL LICENSING BOARD OF INDIANA

By:


Lisa R. Hayes
Executive Director
Health Professions Bureau

Copies to:

Warrick Lee Barrett, M.D.

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RETURN RECEIPT REQUESTED

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